

NEW

OPEN MEETING ITEM

3/17/04



0000070991

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

BRIAN C. McNEIL
EXECUTIVE SECRETARY



SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

TO: Marc Spitzer, Chairman
William A. Mundell, Commissioner
Jeff Hatch-Miller, Commissioner
Mike Gleason, Commissioner
Kristin K. Mayes, Commissioner

DOCKETED

MAR - 4 2004

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKETED BY

OK

DATE: March 1, 2004

RE: Proposed repeal of policy statement - Distribution of Identifying Statements and Preliminary Prospectuses
Docket No. RS-00000A-04-0098

cc: Brian C. McNeil, Executive Secretary

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

2004 MAR - 4 P 2:28

RECEIVED

The Securities Division (the "Division") is seeking permission from the Commission to repeal the policy statement Distribution of Identifying Statements and Preliminary Prospectuses. The Division recommends a notice of substantive policy statement be filed with the secretary of state for publication in the Arizona Administrative Register to provide notice of the repeal of the policy statement.

The Division has a number of policy statements published in the Commerce Clearing House Blue Sky Law Reporter that provide guidance to the public in addition to the guidance provided by statute and rule. The Division is proposing the repeal of this policy statement because the content of the policy statement was replaced by new A.A.C. R14-4-149 ("rule 149") made by the Commission on September 26, 2003. Rule 149 will become effective on March 8, 2004. The policy statement will then be outdated and should be repealed.

Attached for your review is a copy of the proposed order and a copy of the Notice of Substantive Policy Statement. Also attached to facilitate your review is a copy of the policy statement proposed for repeal and the text of rule 149 that replaces the policy statement.

The Division recommends that the policy statement be repealed and the Notice of Substantive Policy Statement be sent to the secretary of state's office for publication.

Originator: Sharleen A. Day

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

In the matter of

NOTICE OF SUBSTANTIVE POLICY
STATEMENT REPEALING POLICY
STATEMENT

DOCKET NO. RS-00000A-04-0098

DECISION NO. _____

ORDER

Open Meeting
March 17, 2004
Phoenix, AZ

BY THE COMMISSION:

INTRODUCTION

The Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") has forwarded to the Commission a proposal recommending that the Commission repeal a published Division substantive policy statement.

FINDINGS

1. The Division has a number of policy statements, which are published in the Commerce Clearing House ("CCH") Blue Sky Law Reporter.

2. The policy statement Distribution of Identifying Statements and Preliminary Prospectuses, (the "Policy Statement") was adopted by the Commission on September 17, 1986, and published in the CCH Blue Sky Law Reporter at ¶ 9601.

3. The content of the Policy Statement has been replaced by A.A.C. R14-4-149, which became effective March 8, 2004.

4. The Division has recommended that the Commission repeal the Policy Statement.

1 5. The Division has recommended that a notice of agency substantive policy statement
2 form be forwarded to the secretary of state for publication in the Arizona Administrative Register
3 to notice the repeal of the Policy Statement.

4 CONCLUSION OF LAW

5 The Commission has the authority for the proposed repeal of the Policy Statement under the
6 Arizona Constitution Article XV § 6 and A.R.S. §§ 41-1091 and 44-1821.

7 ORDER

8 THEREFORE IT IS ORDERED that the Policy Statement is repealed.

9 IT IS FURTHER ORDERED that the Division prepare a Notice of Substantive Policy
10 Statement regarding the repeal of the Policy Statement and forward it to the office of the secretary
11 of state for publication in the Arizona Administrative Register.

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IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Secretary of the Arizona Corporation
Commission, have hereunto set my hand and caused
the official seal of the Commission to be affixed at
the Capitol, in the City of Phoenix, this _____ day of
_____, 2004.

BRIAN C. McNEIL
Executive Secretary

DISSENT
(SD)

This document is available in alternative formats by contacting Yvonne L. McFarlin, ADA
Coordinator, voice phone number 602-542-3931, E-mail ymcfarlin@cc.state.az.us

NOTICE OF SUBSTANTIVE POLICY STATEMENT

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION

1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:

Distribution of Identifying Statements and Preliminary Prospectuses, September 17, 1986, CCH Blue Sky Law Reporter ¶ 9601

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Initial issue date: date listed in item 1 above

Initial effective date: same as issue date

Repeal date: _____

3. Summary of the contents of the substantive policy statement:

The policy statement described conditions under which issuers of securities could distribute identifying statements and preliminary prospectuses prior to registration.

4. Federal or state constitutional provision; federal or state statute; administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

17 CFR § 230.134 (1986); 17 CFR § 230.430 (1986); 17 CFR § 230.431 (1986); A.R.S. §§ 44-1871, 44-1891, and 44-1898(D).

5. A statement as to whether the substantive policy statement is a new statement or a revision:

The content of the policy statement listed above has been replaced by rule. The policy statement is therefore no longer needed and is repealed.

Distribution of identifying statements and preliminary prospectuses—CCH BSLR ¶ 9601

Note.--The publication or distribution to the public of identifying statements pursuant to Rule 134 and preliminary prospectuses pursuant to Rules 430 and 431 of the Securities and Exchange Commission under the Securities Act of 1933 is permitted in Arizona, provided an application for registration of the securities has first been filed with the state Securities Division. The following legend shall appear on each such preliminary prospectus:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission, but has not become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

MATTHEW J. ZALE, Director of Securities, 9-17-86.

R14-4-149. Exemption from registration for offers made in connection with a pending application.

- A. If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 C.F.R. 230.134 (2001), rule 255, 17 C.F.R. 230.255 (2001), or rule 430, 17 C.F.R. 230.430 (2001), which are incorporated by reference and contain no later editions or amendments, shall be added to the class of transactions exempt under A.R.S. § 44-1844.
1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
 2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).
 3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of ten percent or more of any class of its equity securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
 4. The issuer is not applying for registration under A.R.S. § 44-1902.
 5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
 6. The offering is not of speculative or high risk securities as defined by A.A.C. R14-4-118(C).
 7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.
 8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.
- B. The rules incorporated by reference are on file with the Office of the Secretary of State. Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.